



## CITY OF PORTSMOUTH, VIRGINIA

— Established 1752 —

### Office of the City Attorney

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November 16, 2012

Mr. Steve Marzolf  
ISP Director  
Virginia E-911 Services Board  
Commonwealth Enterprise Solutions Center  
11751 Meadowville Lane  
Chester, Virginia 23836  
FAX 804- 416-6353

### Re: E-911 Overpayment

Dear Mr. Marzolf:

The Portsmouth Police Communications Division received your letter dated July 24, 2012, requesting a refund of \$1,084,126.46 on behalf of the Virginia E-911 Services Board. The City of Portsmouth is the seventh most fiscally stressed city in the Commonwealth of Virginia, and a payment of this magnitude would place an undue hardship on the City that would negatively impact our community. This letter is the City's proposed resolution to a problem which was precipitated in part by the inaction of the Wireless E-911 Board over a period of several years. Any reference in this letter to the Board also includes actions by staff to the Board.

*Code of Virginia* §56-484.17 E. requires that the Wireless E-911 Board annually audit the grant funding received by all recipients at the end of each fiscal year (emphasis added). The Code also states that overpayments are to be refunded during the then-current fiscal year (emphasis added). The Board or its representative was informed as early as 2010 of the overpayments by the Portsmouth PSAP Manager, and yet the Board took no action for several years. It failed to stop overpaying Portsmouth, it apparently failed to conduct the required annual audits, and it failed to seek repayment of any overpayment within each then-current fiscal year.

The Board is legally and equitably barred from seeking retroactive payments from Portsmouth.

It is legally barred because of the statutory requirement that overpayments be refunded only during the then-current fiscal year.

It is equitably barred because of the Board's failure to act in a timely manner, particularly since it was repeatedly notified by Portsmouth's PSAP Manager of the overpayments, and the PSAP Manager repeatedly requested corrective action. A brief summary of the history of this matter is provided herein.

- In October of 2009, the Portsmouth Police Communications PSAP Manager, Chris Patterson, noticed that the payment from the Wireless E-911 Board had increased by almost \$80,000, an increase of over 200%. The large monthly increase continued, and in January 2010, Mr. Patterson reported this apparent error to Lyle Hornbaker, the Regional Wireless Board representative. An increase of this magnitude should have been caught and corrected by the Wireless E-911 Board promptly as part of its ongoing fiscal due diligence.
- In February of 2010, Mr. Patterson reported true-up data correcting his error in the Recurring Equipment Costs from \$800,547.00 down to a revised figure of \$113,318.18, according to the letter from the Wireless E-911 Board. In March of 2010, Mr. Patterson attended a remote site meeting of the Board and spoke again with Mr. Hornbaker expressing his concern about the continuing overpayments. Mr. Hornbaker told Mr. Patterson he had never known the Board to request repayment. Mr. Patterson advised him he wanted the overpayments to stop and Mr. Hornbaker advised him to email Ms. Dorothy Spears-Dean, the PSC Coordinator for the Board.
- On March 11, 2010, Mr. Patterson emailed Ms. Spears-Dean requesting that the Board correct the overpayments to Portsmouth and expressed his concerns about the overpayments and whether or not repayment would be expected. (See attached email to Dorothy Spears-Dean, dated March 11, 2010.) Mr. Patterson did not receive a response, and the overpayments continued.
- In May and September of 2010, Mr. Patterson again reported the continuing overpayments to Mr. Hornbaker at the remote site meetings of the Wireless E-911 Board.
- On or about June 9th, 2011, Mr. Patterson spoke with you by phone regarding the State audit of wireless funding and about the overpayments. You acknowledged that Mr. Patterson had notified the Board and its representatives of the overpayments repeatedly in an attempt to rectify the problem.
- Despite the Portsmouth PSAP Manager's best efforts the Board did not reduce the overpayments in a timely fashion, nor did it seek repayment in a timely fashion.

Therefore, the Board is equitably estopped from retroactively collecting the overpayments for FY 2010 and FY 2011.

Due to the legal restriction allowing repayments only during the then-current fiscal year, the unreasonable and continuing delay of the Board in correcting the overpayments that were repeatedly reported by the Portsmouth PSAP Manager, and the undue hardship, difficulty and prejudice that a repayment of this magnitude would cause the City, we propose that the Wireless E-911 Board withhold all of the City of Portsmouth's monthly payments for the remainder of the current fiscal year, *i.e.*, December 2012 through June 2013. This will be a full and final settlement. The City's Wireless E-911 payments will resume without any offset or reduction in July of 2013.

We look forward to receiving your written response accepting our proposed resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy B. Cherry". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Nancy B. Cherry  
Assistant City Attorney

NBC:kw

cc: Brannon Godfrey, Acting City Manager  
Edward Hargis, Chief of Police  
Carol Swindell, Chief Financial Officer  
G. Timothy Oksman, City Attorney